HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.411 of 2007

Between:

Andhra University, represented by
its Vice-Chancellor, Visakhapatnam
and three others. …Appellants

And

Prof. M. Vivekananda Murthy …Respondent

:: J U D G M E N T ::

Counsel for the appellants : Sri M.V. Rajaram

Counsel for the respondent : Sri N. Bharat Babu

4th June, 2007

Per G.S. Singhvi, C.J.

This appeal is directed against order dated 30th April, 2007 passed by the learned Single Judge in Writ Petition No.9137 of 2007, whereby he declined to entertain the respondent's prayer for quashing the decision of the Executive Council of Andhra University (for short, 'the University') to terminate his service by way of dismissal by observing that an effective alternative remedy is available to him but, at the same time, directed the University not to give effect to that decision for a period of four weeks.

Sri M.V. Rajaram, learned counsel for the appellants fairly conceded that the period of four weeks specified in the order under challenge has lapsed, but insisted that the direction given by the learned Single Judge should be set aside by arguing that the same is contrary to the law laid down by the Supreme Court in **State of Orissa v. Madal Gopal**[1].

Sri N. Bharat Babu, learned counsel for the respondent submitted that the appeal should be declared as infructuous because tenure of the interim order passed by the learned Single Judge has already come to an end.

We have considered the respective submissions. In **State of Orissa v. Madan Gopal** (supra), the Constitution Bench of the Supreme Court considered the question whether the High Court can, without deciding the issue raised by the petitioner, grant interim relief and answered the same in the following words:

> "6. ……In our opinion, Art. 226, cannot be used for the purpose of giving interim relief as the only and final relief on the application as the High Court has purported to do. The directions have been given here only to circumvent the provisions of S. 80, Civil P. C., and in our opinion that is not within the scope of Art. 226. An interim relief can be granted only in aid of and as ancillary to the main relief which may be available to the party on final determination of his rights in a suit or proceeding. If the Court was of opinion that there was no other convenient or adequate remedy open to the petitioners, it might have proceeded to investigate the case on its merits and come to a decision as to whether the petitioners succeeded in establishing that there was an infringement of any of their legal rights which entitled them to a writ of mandamus or any other directions of a like nature; and pending such determination it might have made a suitable interim order for maintaining the status quo ante. But when the Court declined to decide on the rights of the parties and expressly held that they should be investigated more properly in a civil suit, it could not, for the purpose of facilitating the institution of such suit, issue directions in the nature of temporary injunctions, under Art.226 of the Constitution. In our opinion, the language of Art.226 does not permit such an action. On that short ground, that judgement of the Orissa High Court under appeal cannot be upheld."

By applying the ratio of the aforementioned judgment to the facts of the case, we hold that the learned Single Judge committed a serious error by directing that the decision of the Executive Council of the

University shall not be given effect to for a period of four weeks.

We are further of the view that in a matter like this, the learned Single Judge should not have passed interim order ignoring the fact that the respondent was dismissed from service on being found guilty of serious financial misdemeanour.

In the result, the appeal is allowed, the direction given by the learned Single Judge to the appellant University not to give effect to the decision of the Executive Council is set aside and it is declared that the respondent shall not be entitled to derive any benefit on the basis of that direction.

As a sequel to disposal of the appeal in the manner indicated above, WAMP.771 of 2007 filed by the appellants for interim relief is disposed of as infructuous.

G.S. SINGHVI, CJ

4th June, 2007

C.V. NAGARJUNA REDDY, J

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[1] AIR 1952 SC 12